

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

DANIEL J. MCCOY, CLERK

United States District Court	District	Western District of Louisiana (Lake Charles)
Name (under which you were convicted): JOSEPH BOSWELL	Docket or Case No.: 2:18-cr-00162-01	
Place of Confinement: FCI BEAUMONT LOW	Prisoner No.: 20966035	
UNITED STATES OF AMERICA	Movant (include name under which convicted) V. JOSEPH BOSWELL	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
Western District of Louisiana
Lake Charles Division

(b) Criminal docket or case number (if you know): 2:18-cr-00162-JDC-TPL-1

2. (a) Date of the judgment of conviction (if you know): 4/28/2023

(b) Date of sentencing: 4/25/2023

3. Length of sentence: 60 Months

4. Nature of crime (all counts):

Count 1: Bankruptcy Fraud, 18 U.S.C. § 152(1) (later reversed by Fifth Circuit due to statute of limitations)
Count 2: Attempt to Evade and Defeat Payment of Tax, 26 U.S.C. § 7201

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

- (a) Name of court: United States Court of Appeals for the Fifth Circuit
- (b) Docket or case number (if you know): No. 23-30315, USA v. Boswell
- (c) Result: REVERSE as to Count One and otherwise AFFIRM.
- (d) Date of result (if you know): 7/23/2024
- (e) Citation to the case (if you know): _____
- (f) Grounds raised:

Boswell contends that his bankruptcy-fraud conviction (Count One) was untimely and that the conviction must be reversed. He also argues that the Government's evidence at trial as to both counts impermissibly deviated from the charges as stated in the indictment; or alternatively, that the Government's evidence was insufficient for conviction. Finally, he contends that the district court lacked jurisdiction to order restitution as a condition of supervised release while an appeal is pending.

On July 23, 2024, the Fifth Circuit reversed the conviction on Count 1 (Bankruptcy Fraud), affirmed Count 2 (Tax Evasion), and remanded the case for resentencing. On November 21, 2024, Boswell was resentenced to 60 months imprisonment and ordered to pay restitution in the amount of \$646,259.70.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know): USCA #23-30315
- (2) Result: Denied
- (3) Date of result (if you know): 12/9/2024
- (4) Citation to the case (if you know): _____
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: United States District Court, Western District of Louisiana (Lake Charles)
- (2) Docket or case number (if you know): 2:18-cr-00162-JDC-TPL-1, Doc. 256.
- (3) Date of filing (if you know): 12/5/2024
- (4) Nature of the proceeding: Motion to Amend/Correct Amended Judgment.
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: Denied

(8) Date of result (if you know): 1/15/2025

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel at Pretrial and Trial Stages

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Failure to advise Boswell of his rights, failure to call crucial witnesses, failure to investigate, and failure to ensure Boswell's right to testify.

See Memorandum of Law in Support.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Ineffective Assistance of Counsel at Sentencing

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Failure to properly challenge the Presentence Report (PSR), failure to object to sentencing enhancements, and failure to advocate for mitigation of punishment.

See Memorandum of Law in Support.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Prejudicial Inclusion of Count 1 and Sentencing Errors

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The inclusion of Count 1 (Bankruptcy Fraud), which was later reversed on appeal, and excessive sentencing enhancements applied without sufficient evidence.

See Memorandum of Law in Support.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Ineffective Assistance of Appellate Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Failure to raise critical issues on appeal, including ineffective trial counsel claims, prejudicial inclusion of Count 1, and excessive sentencing enhancements.

See Memorandum of Law in Support.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel are not generally raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Dustin Charles Talbot, Federal Public Defenders Office, 102 Versailles Blvd Ste 816, Lafayette, LA 70501

(b) At the arraignment and plea:

Dustin Charles Talbot, Federal Public Defenders Office, 102 Versailles Blvd Ste 816, Lafayette, LA 70501

(c) At the trial:

Dustin Charles Talbot, Federal Public Defenders Office, 102 Versailles Blvd Ste 816, Lafayette, LA 70501

(d) At sentencing:

Dustin Charles Talbot, Federal Public Defenders Office, 102 Versailles Blvd Ste 816, Lafayette, LA 70501

(e) On appeal:

Dustin Charles Talbot, Federal Public Defenders Office, 102 Versailles Blvd Ste 816, Lafayette, LA 70501

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

The deadline for filing a § 2255 motion is typically one year from the latest of the following dates:

1. The date on which the judgment of conviction becomes final (after direct appeal).
2. The date on which the impediment to making a motion is removed (if applicable).
3. The date on which the right to file the motion is recognized by the Supreme Court, if new evidence or legal basis is established.
4. The date on which the facts supporting the claim could have been discovered through reasonable diligence.

In this case, since certiorari was denied on 12/09/2024, Boswell's judgment becomes final on that date. Therefore, the deadline to file a § 2255 motion would be 12/09/2025. Boswell has one year from that date to file the motion under 28 U.S.C. § 2255 unless there are extraordinary circumstances that would toll the deadline.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

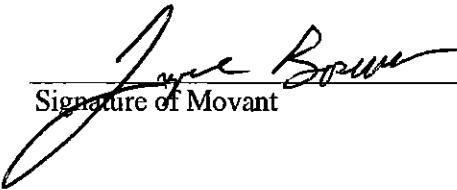
Vacate or set aside his conviction and sentence due to the constitutional violations raised in this motion, including ineffective assistance of counsel at all stages; Grant a new trial or resentencing hearing, . . . (see Memorandum of Law).
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____

(month, date, year)

Executed (signed) on July 31, 2025 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.